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UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on Electronic Commerce
Thirty-second session
Vienna, 19-30 January 1998

PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda

3. Legal aspects of electronic commerce: incorporation by reference

4. Legal aspects of electronic commerce: draft uniform rules on digital signatures, other electronic signatures, certification authorities and related legal issues

5. Other business

6. Adoption of the report

Notes on the provisional agenda

1. The Commission, at its twenty-ninth session (1996), decided to place the issues of digital signatures and certification authorities on its agenda. The Working Group on Electronic Commerce was requested to examine the desirability and feasibility of preparing uniform rules on those topics. It was agreed that work to be carried out by the Working Group at its thirty-first session could involve the preparation of draft rules on certain aspects of the above-mentioned topics. The Working Group was requested to provide the Commission with

sufficient elements for an informed decision to be made as to the scope of the uniform rules to be prepared. As to a more precise mandate for the Working Group, it was agreed that the uniform rules to be prepared should deal with such issues as: the legal basis supporting certification processes, including emerging digital authentication and certification technology; the applicability of the certification process; the allocation of risk and liabilities of users, providers and third parties in the context of the use of certification techniques; the specific issues of certification through the use of registries; and incorporation by reference. [1]

2. At its thirtieth session (1997), the Commission had before it the report of the Working Group on the work of its thirty-first session (A/CN.9/437). As to the desirability and feasibility of preparing uniform rules on issues of digital signatures and certification authorities, the Working Group indicated to the Commission that it had reached consensus as to the importance of, and the need for, working towards harmonization of law in that area. While it had not made a firm decision as to the form and content of such work, it had come to the preliminary conclusion that it was feasible to undertake the preparation of draft uniform rules at least on issues of digital signatures and certification authorities, and possibly on related matters. The Working Group recalled that, alongside digital signatures and certification authorities, future work in the area of electronic commerce might also need to address: issues of technical alternatives to public-key cryptography; general issues of functions performed by third-party service providers; and electronic contracting (A/CN.9/437, paras. 156-157). With respect to the issue of incorporation by reference, the Working Group concluded that no further study by the Secretariat was needed, since the fundamental issues were well known and it was clear that many aspects of battle-of-forms and adhesion contracts would need to be left to applicable national laws for reasons involving, for example, consumer protection and other public-policy considerations. The Working Group was of the opinion that the issue should be dealt with as the first substantive item on its agenda, at the beginning of its next session (A/CN.9/437, para. 155).

3. The Commission expressed its appreciation for the work already accomplished by the Working Group at its thirty-first session, endorsed the conclusions reached by the Working Group, and entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. With respect to the exact scope and form of such uniform rules, it was generally agreed that no decision could be made at this early stage of the process. It was felt that, while the Working Group might appropriately focus its attention on the issues of digital signatures in view of the apparently predominant role played by public-key cryptography in the emerging electronic-commerce practice, the uniform rules to be prepared should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce. Thus, the uniform rules should not discourage the use of other authentication techniques. Moreover, in dealing with public-key cryptography, those uniform rules might need to accommodate various levels of security and to recognize the various legal effects and levels of liability corresponding to the various types of services being provided in the context of digital signatures. With respect to certification authorities, while the value of market-driven standards was recognized by the Commission, it was widely felt that the Working Group might appropriately envisage the establishment of a minimum set of standards to be met by certification authorities, particularly where cross-border certification was sought.

4. As an additional item to be considered in the context of future work in the area of electronic commerce, it was suggested that the Working Group might need to discuss, at a later stage, the issues of jurisdiction, applicable law and dispute settlement on the Internet. The Commission was informed that a colloquium on the issues of jurisdiction and applicable law on the Internet would take place in June 1997 under the auspices of the Hague Conference on Private International Law. The Commission was also informed that an international conference convened by the OECD in November 1997 would attempt to develop a coordinated approach to the issues of electronic commerce among interested Governments, intergovernmental organizations, non-governmental organizations and private sector groups. The Commission expressed the hope that those two events could be attended and reported upon by the Secretariat. [2]

5. The Working Group is composed of all States members of the Commission. These are:

Algeria, Argentina, Australia, Austria, Botswana, Brazil, Bulgaria, Cameroon, Chile, China, Ecuador, Egypt, Finland, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Nigeria, Poland, Russian Federation, Saudi Arabia, Singapore, Slovakia, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

Item 1. Election of officers

6. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Legal aspects of electronic commerce: incorporation by reference

7. The Working Group will have before it a note prepared by the Secretariat for the thirty-first session of the Working Group under the title "Planning of future work on electronic commerce: digital signatures, certification authorities and related legal issues" (A/CN.9/WG.IV/WP.71), which summarizes previous deliberations by the Working Group on the issue of incorporation by reference. The Working Group may wish to use the note as a basis for its deliberations.

Item 4. Legal aspects of electronic commerce: draft uniform rules on digital signatures, other electronic signatures, certification authorities and related legal issues

8. The Working Group will have before it a note by the Secretariat containing draft uniform rules on digital signatures, other electronic signatures, certification authorities and related legal issues (A/CN.9/WG.IV/WP.73). The Working Group may wish to use the note as a basis for its deliberations.

9. The following documents will be made available at the session:

(a) UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996);

(b) Report of the Working Group on Electronic Commerce on the work of its thirty-first session (A/CN.9/437); and

(c) Report of the United Nations Commission on International Trade Law on the work of its thirtieth session (Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)).

Item 6. Adoption of the report

10. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-first session of the Commission (to be held from 1 to 12 June 1998 in New York).

Meetings

11. The session of the Working Group will take place from 19 to 30 January 1998 at the Vienna International Centre. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 29 January, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 09:30 to 12:30 and from 14:00 to 17:00, except on Monday, 19 January 1998, when the session will commence at 10:00.

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[1] Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), paras. 223-224.

[2] Ibid., Fifty-second Session, Supplement No. 17 (A/52/17), paras. 249-251.